



March 2, 2019

Via US Mail, Certified

Cecil Alto  
Alto Brothers Trucking, Inc.  
3610 Old Arcata Road  
Arcata, CA 95521

Via US Mail

Gary Alto  
Alto Brothers Trucking, Inc.  
Agent for service  
991 Bayside Road  
Arcata, CA 95521

**Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Alto Brothers Trucking:

I am writing on behalf of Eden Environmental Citizen's Group ("EDEN") to give legal notice that EDEN intends to file a civil action against Alto Brothers Trucking ("Discharger") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the Alto Brothers Trucking facility located at 3610 Old Arcata Road in Arcata, California ("the Facility" or "the site").

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b).

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Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

## **I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED**

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB") Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around January 5, 1994, Alto Brothers Trucking submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility. On or around December 14, 2015, Alto Brothers Trucking submitted an NOI to be authorized to discharge storm water from the Facility under the 2015 Permit. Alto Brothers Trucking's assigned Waste Discharger Identification number ("WDID") is 1121001578.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, the Discharger has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377, the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

## **II. THE LOCATION OF THE ALLEGED VIOLATIONS**

### **A. The Facility**

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Alto Brothers Trucking's permanent facility address of 3610 Old Arcata Road in Arcata, California.

Alto Brothers Trucking is a trucking facility. Facility operations are covered under Standard Industrial Classification Code (SIC) 4214-Local Trucking with Storage.

Based on the EPA's Industrial Storm Water Fact Sheet for Sector P – Transportation Facilities, polluted discharges from trucking facilities contain pH affecting substances; heavy metals; arsenic, ethylene glycol, total suspended solids, benzene; gasoline and diesel fuels; fuel additives; coolants; and oil and grease. Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Information available to EDEN indicates that the Facility's industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA's Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

#### **B. The Affected Receiving Waters**

The Facility discharges into the Humboldt Bay ("Receiving Waters").

Humboldt Bay is a water of the United States. The CWA requires that water bodies such as the Humboldt Bay meet water quality objectives that protect specific "beneficial uses." The Regional Water Board has issued the North Coast Regional *Basin Water Quality Control Plan* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and noncontact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the Humboldt Bay watershed and threatens the beneficial uses and ecosystem of this watershed.

Furthermore, Humboldt Bay is listed for water quality impairment on the most recent 303(d)-list for dioxin toxic equivalents and polychlorinated biphenyls (PCBs).

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

### **III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT**

#### **A. Late Application For NPDES Coverage**

The CWA prohibits storm water discharges without a permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.26. The General Permit regulates operators of facilities subject to coverage under the National Pollutant Discharge Elimination System (NPDES) storm water permit, as these

operators discharge storm water associated with specific industrial activities identified by both industrial activity and SIC (Standard Industrial Classification) codes in Attachment A of the Permit.

The Discharger's primary industrial activity is listed on Attachment A as an industrial activity subject to NPDES coverage. Thus, the facility is required to apply for coverage under the Permit in order to commence business operations, pursuant to Section 1.Q of the Permit.

Alto Brothers Trucking was covered under the 1997 Industrial General Order which expired on June 30, 2014, and was replaced by the 2014 Industrial General Permit, effective July 1, 2015. In order to continue regulatory coverage under the new Permit, all Dischargers were required to complete a recertification process on or before August 14, 2015. In spite of the fact that the Regional Water Board issued two separate Notices of Noncompliance to the Facility, Alto Brothers Trucking failed to recertify for General Permit coverage and was terminated from the program, effective August 15, 2015.

Alto Brothers Trucking did not in fact re-apply for coverage until December 14, 2015. Thus, between at least August 15, 2015 and December 14, 2015, the Facility operated without NDPPES Permit coverage. During that time, the Facility did not comply with any of the terms of the Permit, including implementing Best Management Practices, collecting and analyzing storm water runoff for pollution parameters, preparing and implementing a Storm Water Pollution Prevention Plan, or filing Annual Reports.

Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code, is grounds for enforcement action against the Facility and is further a violation of Sections I. and II.B.1.b. of the General Permit.

#### **B. Failure to Develop and Implement a SWPPP/Deficient Site Map**

The Discharger has failed to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP") for the Facility and upload it into SMARTS. Furthermore, its Site Map fails to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

The Site Map does not include the minimum required components for Site Maps as indicated in Section X.E of the General Permit. Specifically, the Site Map fails to include the following:

- 1) notes, legends, a north arrow and other data to ensure the map is clear, legible and understandable;
- 2) the facility boundary;
- 3) storm water drainage areas within the facility boundary and portions of any drainage area impacted by discharges from surrounding areas;
- 4) the flow direction of each drainage area.

- 5) on-facility surface water bodies;
- 6) areas of soil erosion;
- 7) nearby water bodies such as rivers, lakes and creeks;
- 8) locations of storm water collection and conveyance systems associated with discharge locations and direction of flow;
- 9) sample locations if different than the identified discharge locations;
- 10) locations and descriptions of structural control measures that affect industrial storm water discharges, authorized NSWDs and/or run-on;
- 11) identification of all impervious areas of the facility, including paved areas, buildings, covered storage areas or other roofed structures;
- 12) locations where materials are directly exposed to precipitation and the locations where identified significant spills or leaks have occurred;
- 13) all areas of industrial activity subject to the General Permit.

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

**C. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit**

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

**1. Failure to Conduct Visual Observations**

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN alleges that between July 1, 2015, and the present, the Discharger has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

**2. Failure to Collect and Analyze Storm Water Samples**

In addition, EDEN alleges that the Discharger has failed to provide the Regional Water Board with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system any storm water samples for the report years 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 to date.

**D. Falsification of Annual Reports Submitted to the Regional Water Board**

Section XXII.1 of the General Permit provides as follows:

**I. Certification**

Any person signing, certifying, and submitting documents under Section XXII.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

**N. Penalties for Falsification of Reports**

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On August 31, 2016 and September 28, 2017, Alto Brothers Trucking submitted its Annual Reports for the Fiscal Years 2015-16 and 2016-2017, respectively. These Reports were signed under penalty of law by Gary Alto. Mr. Alto is the currently designated Legally Responsible Person ("LRP") for Alto Brothers Trucking.

Mr. Alto responded "Yes" to Question No. 3 on both of the Annual Reports ("Did you sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B?") However, as discussed above, Alto Brothers Trucking failed to collect and analyze any storm water samples during either the 2015-16 or the 2016-17 reporting years.

**E. Failure to File Timely Annual Reports**

Alto Brothers Trucking has failed to comply with Section XVI.A of the General Permit, which provides as follows: "The Discharger shall certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year using the standardized format and checklists in SMARTS."

Alto Brothers Trucking's Annual Report for the reporting year 2015-16 was due on or before July 15, 2016. However, the Facility failed to file the Annual Report until August 31, 2016. The Facility's Annual Report for the reporting year 2016-17 was due on July 16, 2017, but was not filed until September 28, 2017.

The Facility's Annual Report for the reporting year 2017-18 was due on or before July 15, 2018. To date, Alto Brothers Trucking has failed to file its 2017-18 Annual Report.

**F. Deficient BMP Implementation**

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that Alto Brothers Trucking has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

Alto Brothers Trucking's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCCT.

**Specific BMP Deficiencies**

On November 2, 2016, the Facility was inspected by Paul Kiernan of the Regional Water Quality Control Board. During that inspection, Mr. Kiernan noted evidence of sediment discharges to the storm drain inlet along Old Avraita Road and that the Site detention pond needed upgrading and had degraded straw bales.

**G. Discharges In Violation of the General Permit**

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

Specifically, the Facility has failed to date to develop and implement an adequate SWPPP and has failed to implement any BMPs at the facility.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III(B) of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

#### **H. Failure to Comply with the Mandates of the Regional Water Board**

Pursuant to Section XIX of the General Permit, Regional Water Boards have general authority to enforce the provisions and requirements of the General Permit, including reviewing SWPPPs, Monitoring Implementation Plans, ERA Reports, and Annual Reports and requiring Dischargers to revise and re-submit PRDs, conducting compliance inspections, and taking enforcement actions.

As fully discussed above, the Regional Water Quality Control Board inspected the Facility on November 2, 2016 and informed the Facility Management that the Facility SWPPP needed to be revised, as it was non-compliant. To date, the Alto Brothers Trucking has failed to upload into SMARTS an adequate SWPPP and Site Map that fully complies with the General Permit.

Alto Brothers Trucking may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

#### **IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS**

The entities responsible for the alleged violations are Alto Brothers Trucking, as well as employees of the Facility responsible for compliance with the CWA.

#### **V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS**

The range of dates covered by this 60-day Notice is from at least July 1, 2014, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

#### **VI. CONTACT INFORMATION**

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez  
EDEN ENVIRONMENTAL CITIZEN'S GROUP  
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EDEN has retained counsel in this matter as follows:

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Paul Warner Law  
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Arcata, CA 95518  
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Email: [plwarner@sbcglobal.net](mailto:plwarner@sbcglobal.net)

To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Paul Warner.

#### **VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT**

As discussed herein, the Facility's discharge of pollutants degrades water quality and harms aquatic life in the Receiving Waters. Members of EDEN live, work, and/or recreate near the Receiving Waters. For example, EDEN members use and enjoy the Receiving Waters for fishing, boating, swimming, hiking, biking, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study. The unlawful discharge of pollutants from the Facility impairs each of these uses.

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of EDEN's members have been, are being, and will continue to be adversely affected by the failure of the Discharger to comply with the General Permit and the Clean Water Act.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), EDEN will seek to recover its litigation costs, including attorneys' and experts' fees.

#### VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages the Discharger's counsel to contact EDEN's counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

  
AIDEN SANCHEZ

Eden Environmental Citizen's Group

Copies to:

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Executive Director  
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